

# SENATE RECORD VOTE ANALYSIS

104th Congress  
2nd Session

Vote No. 176

June 26, 1996, 8:40 p.m.  
Page S-6982 Temp. Record

## DEFENSE AUTHORIZATION/Time Extension for Nuclear Testing Option

**SUBJECT:** National Defense Authorization Act for fiscal year 1997 . . . S. 1745. Hatfield motion to table the Kyl/Reid amendment No. 4049.

### ACTION: MOTION TO TABLE AGREED TO, 53-45

**SYNOPSIS:** As reported, S. 1745, the National Defense Authorization Act for fiscal year 1997, will authorize a total of \$267.3 billion in budget authority for national defense programs (the President requested \$254.3 billion). In real terms, this bill will authorize \$5.6 billion less, and the President requested \$18.6 billion less, than was provided in fiscal year (FY) 1996.

**The Kyl/Reid amendment** would permit the United States and the United Kingdom, effective October 1, 1996, to conduct underground nuclear detonations in the United States in a fiscal year if the following conditions pertained: the Senate had not consented to the ratification of a multilateral comprehensive nuclear test ban treaty; the President had submitted a report for that fiscal year on the status of negotiations for a test ban, the safety and reliability of the United States' nuclear stockpile, an explanation of any plans to dismantle any nuclear weapons, and a description of any planned nuclear tests, including tests planned by the United Kingdom at U.S. test facilities; and Congress had not passed a joint resolution disapproving the President's report within 90 days of its submission. (Under current law, the President may conduct underground nuclear tests until September 30, 1996, and may conduct such tests after that date if another country first conducts a nuclear test.)

Debate was limited by unanimous consent. Following debate, Senator Hatfield moved to table the Kyl/Reid amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

**Those favoring** the motion to table contended:

The United States has been testing nuclear weapons for the past 50 years. It has little to gain from conducting more tests, but it has much to lose. Its nuclear weapons are safe and they are reliable. Instead of trying to make minor improvements with more testing, the United States should be focusing its efforts on making sure that other countries do not get the knowledge that it has. The safety

(See other side)

YEAS (53)			NAYS (45)			NOT VOTING (2)	
Republicans (12 or 23%)	Democrats (41 or 91%)		Republicans (41 or 77%)	Democrats (4 or 9%)		Republicans (0)	Democrats (2)
Bennett	Akaka	Kennedy	Abraham	Hutchison	Breaux		Bingaman <sup>-2</sup>
Chafee	Baucus	Kerrey	Ashcroft	Inhofe	Bryan		Bumpers <sup>-2</sup>
D'Amato	Biden	Kerry	Bond	Kempthorne	Johnston		
Domenici	Boxer	Kohl	Brown	Kyl	Reid		
Gorton	Bradley	Lautenberg	Burns	Lott			
Grassley	Byrd	Leahy	Campbell	Lugar			
Hatfield	Conrad	Levin	Coats	Mack			
Jeffords	Daschle	Lieberman	Cochran	McCain			
Kassebaum	Dodd	Mikulski	Cohen	McConnell			
Pressler	Dorgan	Moseley-Braun	Coverdell	Murkowski			
Specter	Exon	Moynihan	Craig	Nickles			
Stevens	Feingold	Murray	DeWine	Roth			
	Feinstein	Nunn	Faircloth	Santorum			
	Ford	Pell	Frahm	Shelby			
	Glenn	Pryor	Frist	Simpson			
	Graham	Robb	Gramm	Smith			
	Harkin	Rockefeller	Grams	Snowe			
	Heflin	Sarbanes	Gregg	Thomas			
	Hollings	Simon	Hatch	Thompson			
	Inouye	Wellstone	Helms	Thurmond			
		Wyden		Warner			

#### EXPLANATION OF ABSENCE:

1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

#### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

and reliability it should be concerned about is the sure knowledge that unstable regimes are not developing nuclear weaponry.

After three years of difficult negotiations, nuclear and nonnuclear countries appear to be very close to agreeing to a comprehensive nuclear test ban treaty. Once that treaty is agreed to, individual countries will need to approve it. Under the Kyl amendment, the United States could continue conducting nuclear tests until such time as it ratified the treaty. We think testing during this interim period would violate international law. Specifically, article XVIII of the Vienna Convention provides that once a treaty is signed, nations are obligated to refrain from actions which would defeat the object and the purpose of the treaty prior to its entry into force.

Other countries would take it as a sign of bad faith if the United States agreed to the Kyl amendment. They would assume that the United States intended to conduct further nuclear tests. This assumption, in turn, would lead them to reject the treaty and continue their own testing. The United States has had a great deal of difficulty in getting other countries such as China to agree in principle to a nuclear test ban treaty, but it has succeeded. The Kyl/Reid amendment could very well end up snatching defeat from the jaws of victory, and should thus be soundly rejected.

**Those opposing the motion to table contended:**

Under current law, the President may order an underground nuclear test after September 30, 1996 only if another country conducts a nuclear test, but he may order a test before that date regardless of whether another country conducts a test. This amendment, with limitations, would extend the President's ability to order a nuclear test until the ratification of a comprehensive test ban treaty. If the President decided to conduct an underground nuclear test, he would have to submit a report to Congress justifying his decision, and Congress would then have 90 days in which to pass a disapproval resolution if it so desired. The policy advocated by the Kyl/Reid amendment makes much more sense than current law.

Whether or not another country conducts a nuclear test should not be the sole criterion on which to base whether the United States may conduct another test; in fact, we do not think it is even that relevant. The main reasons traditionally for the United States to conduct tests are to ensure the safety or reliability of its nuclear stockpile. A new reason has now emerged--to learn how to deal with the terrorist use of nuclear weapons. If some unforeseen event or knowledge is gained that calls into serious question either the safety or reliability of any particular nuclear weapon in the United States' arsenal, and if an underground test could resolve any concerns, we think the United States should have the option of testing. Similarly, if nuclear experts determine that nuclear tests are needed to determine the best countermeasures for defusing a terrorist nuclear bomb, we think those tests should proceed. Under current law, after September 30 those tests would be banned unless another country, for whatever reason, decided to conduct a test. The ability of the United States to address its nuclear security needs should not be contingent upon the unrelated actions of another country.

Our colleagues do not want the United States to conduct any nuclear tests because they say doing so would harm efforts to conclude a nuclear test ban treaty. There are five declared nuclear powers--China, Russia, France, Great Britain, and the United States--and three threshold nuclear powers--India, Pakistan, and Israel. In 2 days, negotiations on a test ban treaty are expected to conclude, and for it to enter into force, the five nuclear powers and the three emergent powers will have to ratify it. India has said that it will not ratify it unless every country that has nuclear weapons first agrees to get rid of them.

Once and if the treaty enters into force, the President will have the option of withdrawing the United States from it to conduct a nuclear test if it is in the supreme national interest to do so. However, without passage of the Kyl amendment and before the treaty enters into force, the President will not have that authority. It may take 3 years, 10 years, or longer to get this treaty ratified, and in the interim the only authority that will exist for the President to conduct a test will be if another country conducts a test first. Paradoxically, without the Kyl/Reid amendment, the President would have more authority to conduct nuclear tests after the test ban treaty is enacted than he would have before.

Our colleagues, though, tell us that any testing during this interim period will likely defeat the treaty. We disagree. China, for example, has already announced that it intends to conduct another underground nuclear test before ratifying the treaty. Oddly, our colleagues have nothing but praise for China, which only recently has shown a willingness to ban testing. They have not said that China's testing before the treaty is signed will render the treaty null and void. The truth is that the treaty does not forbid testing before it goes into effect; it forbids it after it goes into effect. The only reason for limiting testing is to show "good faith." Certainly something can be said for showing good faith, but if the United States is willing to show good faith for years, what do its potential adversaries have to gain by ratifying the treaty? They can continue testing while the United States unilaterally gives up that right.

The Kyl/Reid amendment would not in any manner encourage or discourage nuclear testing. It would merely put the decision to test or not on a more rational basis. The President would not seize the authority provided by this amendment to begin an unlimited number of tests. In fact, he could not, because unlike current testing authority, which will allow him to conduct tests as he pleases if another country conducts a test first, this amendment would make him report to Congress first and then would give Congress a chance to pass a resolution to stop him. Under this amendment, the costs and benefits would always be weighed.

If the United States has questions about the safety or reliability of its nuclear weapons, or if it needs to test measures for dealing with a terrorist nuclear threat, it should not be impossible for it to proceed unless another country decides to conduct a nuclear test first. Unless the Kyl/Reid amendment passes, after September 30, 1996, and before the ratification of a nuclear test ban treaty, the United States will be in exactly that situation. We urge our colleagues to correct this problem by voting against the motion to table.

**JUNE 26, 1996**

**VOTE NO. 176**

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